

5101:3-26-12**Managed health care programs: ECMP obligations.**

(A) ECMPs must provide or arrange for the delivery of ECM services and must assure that all of the requirements of Chapter 5101:3-26 of the Ohio Administrative Code, the ECMP provider agreement, and all applicable federal, state, and local regulations are met.

(B) ECMPs must meet the obligations specified in paragraph (A) of this rule and provide or arrange for the services specified in paragraphs (D) through (F) of this rule either through direct employment relationships or through fully executed subcontracts with associated entities performing delegated activities and/or services. For the purposes of this rule, the following terms are defined as:

(1) "Subcontractor" means providers or other entities contracted with the ECMP or parts of the ECM collaborative to meet the ECM program requirements;

(2) "Fully executed" means that the legal written agreement between an ECMP and its subcontractors includes dated signatures by both parties. These signatures must be by persons legally authorized to represent those parties, including each signee's formal title.

(C) Subcontracts.

(1) All subcontracts must fulfill the requirements of 42 CFR 438.6 that are appropriate to the service or activity delegated under the subcontract.

(2) A subcontract does not terminate the ECMP's legal responsibility to ODJFS to assure that all of the ECMP's program obligations are performed in accordance with 5101:3-26 and the ECM provider agreement.

(3) For subcontractors other than PCPs that are performing delegated activities, the ECMP must:

(a) Assure prior to entering the subcontract that the entity is capable of performing the delegated activity in accordance with all applicable program requirements;

(b) Provide the entity with all information, materials, and documentation necessary for the entity to meet the delegated program requirements;

(c) Arrange with the entity regular reporting, at least monthly, that summarizes program activities and performance status;

(d) Monitor and document the entity's performance on an ongoing basis and provide copies of such documentation to ODJFS;

(e) Complete an annual assessment of the entity's performance and satisfaction of delegated program requirements and submit to ODJFS

within thirty days of completion:

- (f) Include in the subcontract any provisions for assessing or sharing incentive or penalty payments related to either the entity's or ECMP's performance; and
- (g) Include in the subcontract sanctions that will be imposed for unauthorized use of PHI.

(4) For subcontractors who are PCPs the ECMP must:

- (a) Assure that the physician has a Medicaid provider agreement and is a provider in good standing.
- (b) Not discriminate in regard to the participation, reimbursement, or indemnification of any physician who is acting within the scope of his or her license or certification under applicable state law, solely on the basis of that license or certification. If an ECMP declines to include a physician as a PCP, it must inform the affected physician in writing of its reasons for the decision. This paragraph may not be construed to:
  - (i) Preclude the ECMP from using different reimbursement amounts for different specialties or different practitioners in the same speciality; or
  - (ii) Preclude the ECMP from establishing measures that are designed to maintain or improve quality of services and/or achieve the performance and cost-effectiveness objectives of ECM.
- (c) Assure and document that subcontracting PCPs have been credentialed/recredentialed using the standardized form and process prescribed by the Ohio department of insurance under Chapter 1753 of the Revised Code. Upon ODJFS request, ECMPs must demonstrate the record-keeping associated with maintaining this documentation.

(5) ECMP subcontracts must include a Medicaid addendum that has been prior-approved by ODJFS. All addendums must contain the following:

- (a) An agreement by the subcontractor to comply with the provisions for record keeping and auditing in accordance with Chapter 5101:3-26 of the Administrative Code;
- (b) Specification of the population and county to be served;
- (c) Specification of the services to be provided;
- (d) Specification that the subcontract contains the same terms that are

applicable to the contracted service, be governed by, and construed in accordance with all laws, regulations, and contractual obligations of the ECMP:

- (i) ODJFS will notify the ECMP and the ECMP shall notify the subcontractor of any changes in applicable state or federal law, regulations, waiver, or contractual obligation of the ECMP; and
  - (ii) The subcontract shall be automatically amended to conform to such changes without the necessity for executing written amendments;
- (e) Specification of the terms of the subcontract including the beginning date and expiration date, or automatic renewal clause, as well as the applicable methods of extension, renegotiation and termination;
- (f) Specification of the procedures to be employed upon the ending, nonrenewal, or termination of the subcontract, including the agreement to promptly supply all records necessary for the settlement of any outstanding claims;
- (g) Full disclosure of the method and amount of compensation or other consideration to be received by the subcontractor from the ECMP;
- (h) An agreement not to discriminate in the delivery of services based on the member's race, color, religion, sex, sexual orientation, age, disability, national origin, veteran's status, ancestry, health status or need for health services;
- (i) An agreement by the subcontractor to hold harmless both ODJFS and members in the event that the ECMP cannot or will not pay for the ECM services performed by the subcontractor pursuant to the subcontract;
- (j) An agreement by the subcontractor that the ECMP's payment constitutes payment in full for the ECM service and that the subcontractor will not charge the member or ODJFS any copayment, cost sharing, down-payment, or similar charge, refundable or otherwise;
- (k) A specification that the provider is duly licensed or certified under applicable state and federal statutes and regulations to provide the services that are the subject of the subcontract;
- (l) A stipulation that the ECMP give the subcontractor at least sixty days prior notice for the nonrenewal or termination of the subcontract except in cases where an adverse finding by a regulatory agency or quality of care concerns dictate that the subcontract be terminated sooner;

- (m) A stipulation that the subcontractor may nonrenew or terminate the subcontract if:
- (i) The subcontractor gives the ECMP at least sixty days prior notice for the nonrenewal or termination of the subcontract. The effective date for any subcontractor's nonrenewal or termination must be the last day of the month; or
  - (ii) ODJFS has proposed action in accordance with paragraph (G) of rule 5101:3-26-10 of the Administrative Code, regardless of whether this action is appealed, or if a quality of care concern dictates that the subcontract be terminated sooner than sixty days. The subcontractor's termination or nonrenewal notice must be received by the ECMP within fifteen working days prior to the end of the month in which the subcontractor is proposing termination or nonrenewal. If the notice is not received by this date, the subcontractor must agree to extend the termination or nonrenewal date to the last day of the subsequent month;
- (n) The subcontractor's agreement to serve members through the last day the subcontract is in effect;
- (o) The subcontractor's agreement to make member care management and medical records available for transfer to new providers as necessary to assure continuity of care coordination at no cost to the member;
- (p) A specification that PCPs and other subcontractors must allow the ECMP access to all member medical records for a period of not less than six years from the date of service and allow access to all record-keeping, audits, financial records, and medical records to ODJFS or its designee or other entities as specified in paragraph (B) of rule 5101:3-26-06 of the Administrative Code;
- (q) A specification that the subcontractor must cooperate with ODJFS quality reviews identified in rule 5101:3-26-07 of the Administrative Code;
- (r) A specification that the subcontractor must be bound by the same standards of confidentiality which apply to ODJFS and the state of Ohio as described in rule 5101:1-1-03 of the Administrative Code, including unauthorized uses of or disclosures of PHI;
- (s) A specification that any third party administrator (TPA) must include the elements of paragraph (D) of this rule in its subcontracts and ensure that its subcontractors will forward information to ODJFS as requested;
- (t) A specification that home health providers must meet the eligible provider

requirements specified in rules 5101:3-12-05 and 5101:3-12-06 of the Administrative Code;

- (u) A specification that PCPs must participate in the care coordination requirements outlined in this rule;
- (v) A specification that the subcontractor in providing services to members must identify and where indicated arrange for the following at no cost to the member:

  - (i) Sign language services; and
  - (ii) Oral interpretation and oral translation services.
- (w) A specification that the ECMP may not prohibit, or otherwise restrict a provider acting within the lawful scope of practice, from advising or advocating on behalf of a member who is his or her patient for the following:

  - (i) The member's health status, medical care, or treatment options, including any alternative treatment that may be self-administered.
  - (ii) Any information the member needs in order to decide among all relevant treatment options.
  - (iii) The risks, benefits, and consequences of treatment versus non-treatment.
  - (iv) The member's right to participate in decisions regarding his or her health care, including the right to refuse treatment, and to express preferences about future treatment decisions.
- (x) A stipulation that the subcontractor must not identify the addressee as a medicaid consumer on the outside of the envelope when contacting members by mail;
- (y) An agreement by the subcontractor that members will not be billed for missed appointments;
- (z) An agreement by the subcontractor that in the performance of the subcontract or in the hiring of any employees for the performance of services under the subcontract, shall not by reason of race, color, religion, sex, sexual orientation, age, disability, national origin, veteran's status, health status or ancestry, discriminate against any citizen of Ohio in the employment of a person qualified and available to perform the services to which the subcontract relates

- (aa) An agreement by the subcontractor that it shall not in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance or services under the subcontract on account of race, color, religion, sex, sexual orientation, age, disability, national origin, veteran's status, health status, or ancestry.
- (6) ECMPs must notify ODJFS of the addition, deletion, or modification of subcontracts as they occur and in accordance with the notification requirements below:
- (a) Notify ODJFS of additions or modifications to subcontracts at least thirty calendar days after the effective date of the subcontract;
- (b) Notify ODJFS of subcontract expirations, nonrenewals, or terminations at least thirty calendar days prior to the effective date of such expiration, nonrenewal, or termination, or within one day of becoming aware of such action if less than thirty days prior to the effective date;
- (c) If the deletion affects a PCP, the ECMP must notify, in writing, all members who are served by the PCP. This notice must:
- (i) inform the member of the PCP's name and last date of ECMP service;
- (ii) be sent at least forty-five calendar days prior to the PCP's last date of ECMP service;
- (iii) include information on how the member can select a new PCP or will be assigned to one if no new selection is made by a date specified by the EMCP;
- (iv) include an ECMP telephone number that the member may call for more information, assistance, and to make a new PCP selection.
- (7) For subcontractors who are members of the ECM collaborative or PCPs, the ECMP must conduct at least annual surveys to assess satisfaction and identify areas for improvement. The ECMP must submit a report to ODJFS with the results and proposed action to improve any identified deficiencies within ninety days of survey completion.

(D) ECM services must include but are not limited to:

- (1) Member outreach, assessment, and treatment plan development;
- (2) Care management and coordination;

(3) Twenty-four hour, seven day toll-free health advice line;

(4) Provider relations and education;

(5) Member education and services; and

(6) Promotion of best clinical practices.

(E) ECMP care coordination responsibilities include but are not limited to:

(1) Assurance that each member has a PCP who will manage overall care appropriate to the member's needs as specified in paragraph (F) of this rule;

(2) Information sharing among members of the ECM collaborative and non-member entities to assure care coordination occurs for each member;

(3) Provision of a centralized twenty-four hour toll-free call-in system which is available nationwide:

(a) The call-in system must be staffed by trained medical professionals who will provide members with medical advice and direct members to the appropriate care setting. Such system must also provide information to members and/or providers as necessary to assure access, including, but not limited to, membership status. ECMPs may not require members to contact their PCP or any other entity prior to contacting the twenty-four hour toll-free call-in system for advice or direction concerning emergency and/or after-hours services.

(b) A log for the twenty-four hour toll-free call-in system must be maintained, and accessible, by the ECMP and must include at a minimum:

(i) Identification of the member;

(ii) Date and time of call;

(iii) Member's question, concern or presenting problem;

(iv) Disposition of call;

(v) PCP or other provider if contacted by ECMP; and

(vi) Name and title of person taking the call.

(c) The twenty-four hour toll-free call-in system must have services available to assist:

(i) Hearing impaired members; and

(ii) LEP members in the primary language of the member.

(4) Provision or arrangement of case management (CM) services to coordinate and monitor treatment delivered to members according to their diagnosis and/or related circumstances.

(a) ECMPs must notify all members of the CM services they are eligible to receive;

(b) ECMPs must provide or arrange for and document the following, at a minimum:

(i) Outreach to the member and assessment of the member's health condition;

(ii) Convening of a CM team appropriate to the member's condition and including, at a minimum, the member's PCP, a designated care manager, and the member or member's representative;

(iii) Development and implementation of a written care treatment plan for each member.

(c) ECMPs must report CM data to ODJFS, as required.

(F) ECMP PCP care coordination responsibilities include at a minimum the following:

(1) Assisting with the coordination of the member's overall care;

(2) Participating in the development of the member's care treatment plan;

(3) Participating on the member's CM team; and

(4) Serving as the source of primary and preventive care for the member.



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CERTIFIED ELECTRONICALLY

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Certification

06/21/2004

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Date

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